IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 9915 OF 2004.

Amit B. Dalal of Mumbai, aged 38
years, Indian Inhabitant, residing at
Flat No.402, 4th floor, Building No.2,
Dheeraj Sagar, Link Road, Malad (W),
Mumbai-400 064. .... Petitioner.

V/s

Lydia Luis of Mumbai, aged 40 years,
Indian Inhabitant, residing at Dheeraj
Kirti, D/716, CTS No.307, Malad (W),
Mumbai-400 064. .... Respondent.

Mrs.V.B. Thadani for the petitioner.

Mr.K.D. Jha for respondent.

CORAM: R.M.S. KHANDEPARKAR, J.

16-12-2004

Oral Judgment:

Heard learned advocates for parties.

Rule. By consent rule made returnable forthwith.

2. The petitioner challenges the order passed by the Competent Authority rejecting the leave to defend and ordering eviction of the petitioner from the suit premises and confirmation of the said order by the Revisional Authority. Though the impugned orders are sought to be challenged on various grounds it is not necessary to consider all these grounds in the present matter and it is suffice to refer to only one ground regarding failure on the part of Competent Authority to appreciate the fact that the application for leave to defend was filed within statutory period of 30 days from the date of service of summons while rejecting the leave on the ground that the application in that regard was time barred.

3. Clear finding by the Revisional Authority on the aspect of issuance of summons apparently reveal that it was issued on 15.4.2004 by the Competent Authority pursuant to the application filed by the respondent under section 24 of the Maharashtra Rent Act, 1999 on 13.4.2004 and the application for leave to defend was filed by the petitioner on 7.5.2004. Obviously therefore the application was within the period of 30 days not only form the date of service of summons but even within 30 days from the date of issuance of summons itself. That being so, application could not have been rejected on the ground that it was time barred.

4. It is also pertinent to note that the application was rejected by holding that the petitioner had not produced any evidence on record to show that he was paying compensation regularly as per the agreement and that in the opinion of the Competent

Authority the respondent had rightly terminated the licence of the petitioner. It was a clear case of not only improper exercise of jurisdiction but violation of basic principles of natural justice by the Competent Authority in arriving at the above finding in as much as that the Competent Authority on one hand refused the leave to the petitioner to defend the proceedings and on the other hand has accused the petitioner of having failed to produce evidence on record to show that he was paying compensation regularly and has further ventured to arrive at the finding that the termination of licence was justified and that too without giving opportunity to the parties to lead evidence in subject of their case. It was highly improper for the Competent Authority to arrive at such a finding without giving an opportunity to the parties to place the materials on record in support of their rival contentions in the matter. Once the leave was refused to the petitioner, there could have been no opportunity for the petitioner to place on record necessary material in support of his defence. That being so, the findings in that regard were apparently premature and without giving proper opportunity to the petitioner to establish his case.

5. In the facts and circumstances therefore the impugned orders passed by the Competent Authority as well as Revisional Authority cannot be sustained for the reasons stated above and they are liable to be quashed and set aside. The matter is remanded to the Competent Authority to decide the application filed by the petitioner for leave to defend in accordance with provisions of law and after hearing the parties. Needless to say that as rightly pointed out by the learned advocate for the respondent the Competent Authority is enjoined to dispose of the matter in accordance with provisions of law and within the period specified under the statute.

6. Hence the petition succeeds. Impugned orders are hereby quashed and set aside. Matter is remanded to Competent Authority to deal with the application filed by the petitioner on 7.5.2004 seeking leave to defend in accordance with provisions of law and then to proceed with the matter in accordance with law. Rule is made absolute accordingly with no order as to costs. It is made clear that this Court has not expressed any opinion on the merits of the case and the Competent Authority will have to decide the matter in accordance with provisions of law based on material to be placed by the parties before it. C.C. Expedited.